GOVERNMENT OF INDIA
FINANCE
LOK SABHA

UNSTARRED QUESTION NO:3517
ANSWERED ON:16.12.2005
SECURITISATION ACT
Appadurai Shri M.

Will the Minister of FINANCE be pleased to state:

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(a) whether under the Securitisation and Reconstruction of Finance Assets and Enforcement of Security Interest Act, 2002, the personal assets and properties of the borrowers, partners, directors can be attached towards the bad loans ;

(b) if so, the details thereof ;

(c) if not, whether the Government proposes to amend the said Act in this regard; and

(d) if so, the details thereof ?

Answer

MINISTER OF STATE IN THE MINISTRY OF FINANCE (SHRI S.S.PALANIMANICKAM)

(a) to (d):- Under the provisions of Section 13 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 banks and financial institutions, as secured creditors, are empowered to take possession of securities given to them for due repayment of any loan, in the event of default committed by the borrowers. The secured creditors also have the power to sell such securities, without intervention of Courts, in accordance with the provisions of the Act, for the purpose of recovering the defaulted loans The basis of providing a power of enforcement of securities to the secured creditors is the agreement between secured creditors and borrowers creating secured interest over the property, which also contain stipulation that the borrower cannot create any other charge on such property without the consent of the secured creditors. It is, however, open to the lenders to attach properties of borrowers, not mortgaged to the bank, by obtaining suitable orders from Court or Tribunals. If the Court or Tribunals find that such property of the borrowers is already encumbered, the attachment to be granted to the lender will become subservient to the encumbrance already existing. It is, therefore, not possible to amend the Securitisation Act empowering the secured creditors to attach properties, which do not constitute securities for the loan. Such an amendment would also be against the basic objective of the Securitisation Act, which is to facilitate enforcement of securities given to the secured creditors.